(3)

THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

W. P. NO. 1461 OF 2004

PETITIONER

S.M.Khankhoje, S/o Shri M.S Khankhoje, aged about 63 years, R/o C-3, Deendayal Awasiya Parisar Rohinipuram, Raipur & Member, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Raipur District Raipur [Chhattisgarh]

VERSUS

RESPONDENTS

1. The Registrar, Co-operative Societies, Chhattisgarh, Agricultural University Campus, Labhandi, Raipur

2. Samaru Ram Dhruv/expired. Ex-Director Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

3. Officer-in-Charge, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Raipur having its office at Rohini puram Raipur [Chhattisgarh]

4. Sachhinand Upasane, Ex- Adhyaksha, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohini puram Raipur [Chhattisgarh]

5. Anil Tope, Ex-Upadhyaksha Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

6. Kamlakar Kusre, Ex-Director-Member, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

P. R. No. 1534/04
Presented by Shri Ajmal Khan
dated 10-5-04

उपायुक्त, बिलासपुर संभाग बिलासपुर

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7. Prasanna Nimonkar, Ex-Director-Member, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

8. Vinod Modak, Ex - Director Member, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

9. Madhukar Thakre, Ex-Director-Member, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

10. Smt. Jyoti Variyani, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

11. Smt. Sandhya Lakhe Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

12. Anil Kalole, Lokmanya Sahakari Grah Nirman Samstha Maryadit, Rohinipuram Raipur [CG]

Respondent No.4 to 12 all C/o Registrar, Co-operative Societies, Raipur [CG]

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

The petitioner, above-named, most respectfully submits as under:

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HIGH COURT OF JUDICATURE AT BILASPUR,CHHATTISGARH

Writ Petition No.1461 of 2004

S.M. Khankhoje

- Versus -

The Registrar, Co-operative Societies, Chhattisgarh,
Agricultural University Campus, Labhandi, Raipur & Others

POST FOR ORDER ON 21/4 SEPTEMBER, 2005

Sd/-
L.C.BHADOO
Judge

(442)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1461 of 2004

S.M. Khankhoje

- Versus -

The Registrar, Co-operative Societies, Chhattisgarh,
Agricultural University Campus, Labhandi, Raipur & Others

Present: -

Mr. Manindra Shrivastava, Sr. Advocate with Mr. Amrito Das, Advocate:	For the petitioner.
Mr. Sandeep Dubey & Mr. Yashwant Singh Thakur, Govt. Advocate with Mr. R.R. Sinha, Panel Lawyer:	For respondent No.1.
Mr. B.P. Sharma, Advocate:	For respondents No.4 to 12.

ORDER

(Passed on 21st September, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has challenged the order dated 5-5-2004 passed by the Registrar, Co-operative Societies, Chhattisgarh, whereby learned Registrar exercising revisional power under Section 78 of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as 'the Act, 1960) set aside the order dated 8-8-2002 passed by the Deputy Registrar, Co-operative Societies, Raipur, exercising power under Section 53 (1) of the Act, 1960 superceding "Lokmanya Housing Co-operative Societies Ltd.", Raipur.

2. Brief facts, as set out in the petition, leading to filing of this writ petition are that a Society known as "Lokmanya Sahkari Greh Nirman

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Samiti Maryadit", Raipur (for short 'the Society') was constituted under the provisions of the Act, 1960 for the purpose of providing plots and constructed houses to its members. Same was registered under the provisions of the Act of 1960 on 4-12-1982. The management of the Society vests in a Managing Committee/Board of Directors and the body was elected from time to time. The last body was constituted by way of an election in which respondent No.4 was elected as Adhyaksha, respondent No.5 Anil Tope was elected as Up-Adhyaksha, respondents No. 6 to 9 were elected as Directors and respondents No.10 to 12 were elected as members of the Committee. As borne out from the record, certain complaints were made against the Managing Committee on 17-1-2002 and thereupon the Co-operative Department called upon the Society to explain about the demand of Rs.17,000/- and the Society was restrained from collecting the said amount, against which Writ Petition No.696/2002 was filed on 4-4-2002. Thereafter, on 7-5-2002 Executive Engineer, Public Works Department was appointed to assess cost of the flats. He submitted report whereupon a show cause notice under Section 53(2) of the Act, 1960 was issued to the Managing Committee on 27-7-2002 and they were asked to submit their reply within 7 days to which some of the Directors filed their reply in between 28th to 30th July 2002. A Writ Petition No.1573/2002 was filed challenging the said show cause notice. However, in the meantime, the Deputy Registrar while exercising the power under Section 53(1) of the Act, 1960 passed order dated 8-8-2002 superceding the Society and Mr. J.P. Mishra, Co-operative Inspector, was appointed as Officer-in-charge of the Samiti. The petitioner in these two writ petitions filed an application for withdrawal of writ petitions on the ground that order under challenge has been withdrawn by the Registrar. Therefore, these two writ petitions were dismissed as withdrawn vide order dated 6-7-2004. However, before that, the Registrar

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while exercising suo motu revisional powers under the amended provisions of Section 78 of the Act, 1960 set aside the order dated 8-8-2002 passed by the Deputy Registrar vide order dated 5-5-2004 and the same has been challenged by the petitioner on the ground that he is a member of the Society, and the impugned order has been passed by the Registrar, Co-operative Societies in an arbitrary and illegal manner, without any jurisdiction and in utter violation of the principles of natural justice. The said order suffers from the malafide, abuse and misuse of the statutory power.

3. Return has been filed on behalf of respondents in which preliminary objection has been raised about maintainability of this writ petition on the ground that the petitioner is not a person aggrieved, therefore, he is not entitled to file the writ petition. He has filed this writ petition merely at the instance of Mr. J.P. Mishra, Officer-in-charge appointed by the Deputy Registrar. It has further been mentioned that the order passed by the Deputy Registrar was wholly perverse, illegal and arbitrary. The Registrar has rightly exercised suo motu revisional power under Section 78 of the Act, 1960, therefore, it has been prayed that the writ petition be dismissed.

4. I have heard Mr. Manindra Shrivastava, Learned Sr. Advocate for the petitioner, Mr. Yashwant Singh Thakur, Govt. Advocate for respondent No.1 and Mr. B.P. Sharma, Advocate for respondents No.4 to 12.

5. Mr. Manindra Shrivastava, learned Senior Advocate argued that the Registrar, Co-operative Societies has exercised revisional power against the order dated 8-8-2002 under the amended provisions of Section 78 of the Act, 1960 which was inserted on 9-9-2003. The respondents were entitled to file an appeal against the order dated 8-8-2002 under old Section 78 (1) (a) of the Act, 1960 within a period of 30 days of the order of the Deputy Registrar, but they

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remained silent and preferred not to file an appeal against the order dated 8-8-2002, and they preferred a writ petition. Under un-amended Section 80-A of the Act, 1960 the Registrar was not entitled to exercise revisional power in this case as under old Section 80-A, revisional powers could have been exercised only in respect of a Society funded by the Government. Therefore, after the lapse of period of around about 1 year 9 months the Registrar was not justified in exercising suo motu revisional power under the amended provisions of Section 78 of the Act, 1960, particularly when challenging the order dated 8-8-2002 the writ petition was already pending before the High Court. Such exercise of power on the basis of amended provision, which was inserted on 9-9-2003, is a colourable exercise of power because the amended provisions of Section 78 are not retrospective in their operation. The Registrar exercised suo motu power in a haste, without application of mind which is evident from the fact that notice for exercising such power was given on 26-3-2004, the date of hearing was fixed on next day i.e. 27-3-2004 and ultimately, the order impugned was passed on 5-5-2004 whereby earlier order dated 8-8-2002 was revised. He further argued that the petitioner being a member of the Society comes under the category of aggrieved person, therefore, he is within his right to file this writ petition against unjustified order dated 5-5-2004.

6. On the other hand, Mr. B.P. Sharma, learned counsel for respondents No.4 to 12 and Mr. Yashwant Singh Thakur, Govt. Advocate for respondent No.1 submitted that the petitioner is not entitled for filing this writ petition and he does not fall in the category of aggrieved person. There are large number of members of the Society, they have not authorized the petitioner to file the petition in their behalf, therefore, single member without affecting his legal rights is not entitled to file the writ petition, rather he has filed

this writ petition at the instance of Mr. J.P. Mishra, Officer-in-charge who provided all the documents to the petitioner and the petitioner has filed this petition as a personally interested person because Mr. J.P. Mishra, as an Officer-in-charge of the Society, sold the flat to the petitioner at the cost of Rs.1,72,000/- whereas, market value was Rs.2,56,000/- as written in the sale deed. They further submitted that the Registrar, Co-operative Society has rightly exercised power under the amended provisions of Section 78 of the Act, 1960 because there is nothing in this amended Section 78 of the Act, 1960 that it will not be retrospective in operation and in case of procedural laws even if nothing has been mentioned about retrospective effect of the amended provisions, the authority was entitled to exercise power for revising order dated 8-8-2002 passed by the Deputy Registrar, same being bad in law and the Deputy Registrar superceded the Society in a biased and arbitrary manner which is evident from the order of the Registrar dated 5-5-2004. The whole exercise against the Society was conducted in a malafide manner. Even the Executive Engineer of PWD was asked to assess the cost of the flat. Moreover, the Society was superceded for the action of earlier Managing Committee relating to the year 1992 when cost of the flat was assessed. There was no allegation against the existing Managing Committee, as such existing Managing Committee could not have been superceded for the act which was alleged to have been committed in the year 1992.

7. Having heard learned counsel for the parties, the law as to who is person aggrieved, relaxation in the rule of locus standi as settled by the Hon'ble Apex Court is as under:-

In the matter of **S.P. Gupta V. Union of India and another** reported in **AIR 1982 SC 149** the Hon'ble Apex Court held that 'member of the public, who approaches the Court in cases of public

interest, must be acting in a *bonafide* manner and not for personal gain or private profit or political motivation or other oblique consideration.' In the matter of **DR. B. SINGH V. UNION OF INDIA AND OTHERS** reported in **(2004) 3 Supreme Court Cases 363** the Hon'ble Apex Court held that:

> "Only a person acting *bonafide* and having sufficient interest in the proceeding of public interest litigation will alone have a *locus standi* and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration."

The Hon'ble Apex Court in the matter of **JANATA DAL V. H.S. CHOWDHARY AND OTHERS** reported in **1992 (4) SCC 305** in para-62 held that:

> "Be that as it may, it is needless to emphasise that the requirement of *locus standi* of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

In the matter of **S.P. ANAND V. H.D. DEVE GOWDA** reported in **AIR 1997 SUPREME COURT 272** in para-18 the Hon'ble Apex Court held that:

> "Before we part, we cannot help mentioning that on issues of constitutional laws, litigants who can lay no claim to have expert knowledge in that field should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the *locus standi* rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. It must be borne in mind that no one has a right to the waiver of the *locus standi* rule and the Court should permit it only when it is

> satisfied the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the Court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filing a series of petitions refusing to accept the Court's earlier decisions as concluding the point."
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> (Emphasis supplied)

In the matter of **JASBHAI MOTIBHAI DESAI Versus ROSHAN KUMAR, HAJI BASHIR AHMED AND OTHERS** reported in **(1976) 1 Supreme Court Cases 671** the Hon'ble Apex Court in para-13 held that:

> ".....Who is an "aggrieved person" and further held that the expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

8. In the light of above law, we have to examine whether the petitioner has been able to satisfy above requirements that he comes in the category of an "aggrieved person" and he has approached this Court by way of this writ petition for a public cause. From the petition it appears that the petitioner is a member of Lokmanya Sahkari Greh Nirman Samiti Maryadit and he has stated that he is filing this petition in the capacity of member of the Society seeking to challenge initiation of such illegal proceedings which are wholly without jurisdiction and authority of law and have been initiated only in order to reinstate the Managing Committee/Board of Directors which was earlier removed because now the removed office bearers

of the superceded Board of Directors of the Society are exercising their political influence and writing applications for their reinstatement on the assurance that in the event of they being reinstated, the writ petition filed before this Court will be withdrawn. He has nowhere mentioned about affecting any of his legal right. He has filed this writ petition stating that the order passed by the Registrar exercising suo motu revisional power is bad in law and arbitrary, and the order passed by the Deputy Registrar superceding the Society under Section 53 (1) of the Act, 1960 dated 8-8-2002 was justified.

9. On the other hand, respondents in their return have clearly mentioned and learned counsel for respondents also argued that the petitioner herein has filed this petition at the instance of Mr. J.P. Mishra, Co-operative Inspector, Officer-in-charge of the Society. Mr. Mishra without any authority sold the flat to the petitioner at the cost of Rs.1,72,000/- whereas market value of the flat has been shown in the sale deed itself as Rs.2,56,000/-. Therefore, Mr. J.P. Mishra and the petitioner have links and Mr. Mishra being an Officer-in-charge of the Society enjoying all the powers, violating all norms and he also benefited the petitioner. Therefore, the petitioner has filed this petition in collusion with Mr. J.P. Mishra.

10. As per the petitioner's petition the Society has large membership, which consists of retired employees, doctors and persons in other walks of life. The Society has been constituted with a laudable object of providing houses and plots to the members of the Society on payment of prescribed amount. The Housing Society has membership of almost 800 persons and interest of large number of persons is involved. When as per the petitioner's own statement 800 members are there and large interest of all the members is involved, then how the petitioner single handedly chosen to file this petition

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he has not mentioned in this petition, and why other members have not joined the petitioner is not clear from the petition. This petition conceals more than the disclosure made in the petition.

11. It is admitted position that the Society is a Co-operative Society which was constituted for the purpose of construction of flats and providing houses to its members. The Co-operative Society may be defined as a voluntary association of individuals, combined to achieve an improvement in their social and economic conditions through the common ownership and democratic management of the instruments of wealth. Co-operation is a form of organization in which persons voluntarily associate together on a basis of equality for the promotion of their economic interests. Those who come together have a common economic aim which they cannot achieve by individual isolated action because of the weakness of the economic position of a large majority of them. This element of individual weakness is overcome by the pooling of their resources, by making self-help effective through mutual aid, and by strengthening the bonds of moral solidarity between them. While dealing with the case under the same Co-operative Societies Act, 1960 the Division Bench of the Madhya Pradesh High Court in the matter of **BRIJ GOPAL DENGA AND OTHERS V. STATE OF MADHYA PRADESH AND ANOTHER** reported in **1979 M.P.L.J. 695** observed that:

> "……societies which can be registered under the Act are those which have their objects the promotion of the economic interest of their members or their general welfare in accordance with the co-operative principles or similar objects. The basic principle of co-operation is that the members join as human persons and not as capitalists. Co-operation is a form of organization wherein persons associate together as human beings on the basis of equality for the promotion of the economic interest of themselves. Co-operation is a method of doing business with an ethical base. "Each for all, and all for each" is the *motto* of co-operation. Co-operation not only

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> develops the latent business capacity of its members; it produces leaders; it encourages the growth of social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realizes that there is something more to be sought than mere material gain for himself.

Therefore, with the above purpose, the Co-operative Society was constituted.

12. The petitioner has not been able to mention in this petition as has been mentioned earlier that out of 800 persons why other persons have not felt aggrieved by the impugned order whereby elected Managing Committee has been revived and why they have not joined the petitioner, and as is evident from the fact that Co-operative Inspector Mr. J.P. Mishra who was appointed as an Officer-in-charge of the Society vide order dated 8-8-2002 even sold one flat to the petitioner. Now, the petitioner has preferred this writ petition and even all the papers which have been filed are said to have been provided to him by Mr. J.P. Mishra.

13. As the petitioner has not been able to mention that how he came in possession of the documents which are filed along with this petition, therefore, in the above facts and circumstances of the case, I am of the considered opinion that the petitioner has not come with clean hands while filing this petition. He has not spelt out the circumstances under which he was constrained to file this writ petition and why other persons have not joined with him particularly looking to the background of the petitioner that he derived benefit from the administrator Mr. J.P. Mishra. The petitioner has not been able to establish that he is an aggrieved person in the circumstances of the case.

14. In the matter of **SAJJAN SINGH V. BOARD OF REVENUE AND OTHERS** reported in **1986 M.P.L.J.8**, while interpreting the

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provisions of the same Act, on similar facts, Madhya Pradesh High Court held that:

> "……In his capacity as a mere member of the Society, the petitioner had no *locus standi* to challenge the order of the Joint Registrar by taking recourse to any of the remedies provided under the Act. The parties affected by the said order were the Society and the members of the Managing Committee. The Society had a separate identity of its own different from the individual members and its final authority vested in the general body of members. The petitioner did not purport to represent the general body of members."

15. In view of the above decisions, and reasons mentioned above, the petitioner has not been able to establish that he is a person aggrieved, therefore, he is not entitled to file this writ petition. On this count, the writ petition is liable to be dismissed, therefore, I am not required to decide other issues raised in this writ petition.

16. In the result, the writ petition fails and the same is dismissed. No costs.

Sd/-
L.C.BHADOO
Judge

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